

FILE COPY

Office - Supreme Court, U. S.

FILED

APR 1 1941

CHARLES ELMORE CROPLEY
CLERK

IN THE
Supreme Court of the United States

OCTOBER TERM, 1940

NO. 686 21

GEORGE C. REITZ,

Appellant,

against

CARROLL E. MEALEY, as Commissioner of Motor
Vehicles of the State of New York,

Appellee.

BRIEF FOR APPELLEE

✓ **JOHN J. BENNETT, JR.,**

Attorney General of the

State of New York,

Counsel for Appellee.

✓ **HENRY EPSTEIN,**

Solicitor-General.

✓ **JACK GOODMAN,**

Assistant Attorney General,

Of Counsel.

INDEX TO BRIEF

	PAGE
The Opinions of the Court Below	1
Jurisdiction	1
Statement of the Case	2
Statute	3
Summary of Argument	10
Argument	
I. Section 94-b of the Vehicle and Traffic Law does not violate the Fourteenth Amendment of the Federal Constitution	11
A. The requirement that the debtor furnish "proof of his ability to respond in damages for future accidents" is valid.	11
B. The provision that the license is suspended for such part of three years as the judgment remains unsatisfied, unless the creditor consents to its restoration, is valid	12
II. Section 94-b of the Vehicle and Traffic Law does not violate either Article I, Section 8, Clause 4 of the Federal Constitution or Section 17 of the Bankruptcy Act	16
A. Section 17 is intended merely to afford a defense to an action on the discharged judgment	17
B. Section 17 is not intended to interfere with state legislation whose incidental effect is to compel the payment of a discharged judgment	17
C. Section 94-b is valid even if its sole purpose is compensation to the judgment creditor	20
Conclusion	22

TABLE OF CASES

	PAGE
Continental Baking Co. v. Woodring, 286 U. S. 342 (1932)	12
Dimock v. Revere Copper Co., 117 U. S. 559 (1886)	17
Ex parte Poresky, 290 U. S. 30 (1933) ... 11, 15, 21,	22
Federal National Bank v. Koppel, 253 Mass. 157, 148 N. E. 379 (1925)	17
Garford Trucking Co. v. Hoffman, 114 N. J. L. 522, 177 A. 882 (1935)	14
Hodge Co. v. Cincinnati, 284 U. S. 335 (1932)	12
In re Koronsky, 170 Fed. 719 (1909) 19,	20
In re Opinion of the Justices, 251 Mass. 569, 147 N. E. 681 (1925)	22
In re Opinion of the Justices, 251 Mass. 617, 147 N. E. 680 (1925)	14
In re Opinion of the Justices, 81 N. H. 566, 129 A. 117 (1925)	15
In re Petition of Balinski (Mich., 1939)	19
In re Spagat, 4 F. Supp. 926 (1933)	19
Jones v. Harnett, 247 A. D. 7; 286 N. Y. Supp. 220 (1936)	21
Munz v. Harnett, 6 F. Supp. 158 (1933) . . 13,	19
Nulter v. State Read Commission of W. Virginia, 119 W. Va. 320, 193 S. E. 549 (1937)	14
Packard v. Banton, 264 U. S. 140 (1924)	12
Palmer v. Massachusetts, 308 U. S. 79 (1939)	20
People ex rel. Otterstedt v. Sheriff of Kings County, 206 Fed. 566 (1913)	19
People v. Rosenheimer, 209 N. Y. 115, 147 N. E. 681 (1925)	22
Power Manufacturing Co. v. Saunders, 274 U. S. 490 (1927)	22
Rineer v. Boardman, 32 D. & C. 27, 45 Dauph. 78 (Pa. 1938)	19

TABLE OF CASES

	PAGE
Rosenblum v. Griffin, 89 N. H. 314, 197 A. 701	
(1938)	14, 15, 23
Sheehan v. State Division of Motor Vehicles,	
140 Cal. App. 200, 35 P. (2) 359 (1934) . . .	14
Spalding v. New York, 4 How. 21 (1846) . . .	19
Sprout v. City of South Bend, 277 U. S. 163	
(1928)	15
State ex rel. Sullivan v. Price, 49 Ariz. 19, 63	
P. (2) 653 (1937)	14
State v. Sterrin, 78 N. H. 220, 98 A. 482	
(1916)	22
Sullins v. Butler, 175 Tenn. 468, 135 S. W.	
(2) 930 (1940)	14
Watson v. State Division of Motor Vehicles,	
212 Cal. 299, 298 P. 481 (1931)	14
Zavelo v. Reeves, 227 U. S. 625 (1913)	17

STATUTES

	PAGE
Judicial Code, Secs. 238, 266	2
Bankruptcy Act, Secs. 1 (12), 17.....	16
Vehicle and Traffic Law, Sec. 94-b.....	3
Session Laws of New York	
L. 1930, ch. 398	x
L. 1931, ch. 669	x
L. 1934, ch. 438	x
L. 1936, ch. 293	x
L. 1936, ch. 448	9
L. 1936, ch. 771	9
L. 1937, ch. 114	9
L. 1937, ch. 463	9
L. 1939, ch. 618	10

LEGAL PERIODICALS

34 Columbia Law Review 555 (1934)	24
19 Cornell Law Quarterly 278 (1934)	24
47 Harvard Law Review 870 (1934)	24
39 Michigan Law Review 645 (1941)	24
8 University of Chicago Law Review 326 (1941)	24
5 University of Pittsburgh Law Review 26 (1938)	24
43 Yale Law Journal 344 (1933)	24

IN THE
Supreme Court of the United States

OCTOBER TERM, 1940

No. 686

GEORGE C. REITZ,

Appellant,

against,

CARROLL E. MEALEY, as Commissioner
of Motor Vehicles of the State of
New York.

Appellee.

BRIEF FOR APPELLEE

THE OPINIONS OF THE COURT BELOW

The opinion of Judge Learned Hand, concurred in by Judge Cope, is reported in 34 F. Supp. 532 at p. 533, and appears at pp. 6-10 of the Transcript of Record. The dissenting Opinion of Judge Cooper is reported in 34 F. Supp. 532 at p. 535, and appears at pp. 11-22 of the Transcript of Record.

JURISDICTION

This Court on February 3, 1941, entered an order noting probable jurisdiction in this case.

Jurisdiction appears to exist by virtue of Judicial Code, Secs. 238 and 266 (28 U. S. C. A. Secs. 345 and 380). The appeal is from a final order and judgment, of a three judge district court, convened pursuant to Section 266 of the Judicial Code, dismissing a complaint which seeks to enjoin the enforcement of a statute of the State of New York by restraining the action of a State officer upon the ground of the unconstitutionality of such statute.

STATEMENT OF THE CASE

This is an action brought to enjoin the Commissioner of Motor Vehicles of the State of New York from enforcing a suspension of the appellant's driver's license as a chauffeur. The order suspending the license (R. 4A-4B) was issued on May 29, 1940 pursuant to Section 94-b of the Vehicle and Traffic Law of New York (Cons. Laws, c. 71). The occasion for the order of suspension was the receipt by the appellee, the Commissioner, from the Clerk of the Supreme Court of Albany County of a transcript of a judgment, with evidence of its finality and nonpayment, rendered against the appellant in the sum of Five Thousand One Hundred Thirty-Eight Dollars and Twenty-Five Cents (\$5,138.25). (R. 2.) The judgment had been obtained in an action to recover damages for personal injuries arising out of the operation of an automobile by the appellant herein. (R. 1.)

On June 21, 1940 the appellant was adjudicated a bankrupt and his proceeding in bankruptcy was duly referred (R. 1). Among his debts scheduled therein was the above described judgment (R. 1).

At the commencement of this action the question of appellant's discharge had not yet been determined (R. 1). It is admitted, however, that this judgment is dischargeable in bankruptcy.

The case comes to this Court on appeal from a final order and judgment of the District Court of the United States for the Northern District of New York, three judges sitting, dismissing the complaint. (R. 22.)

Appellant asserts the unconstitutionality of Section 94-b of the Vehicle and Traffic Law of New York on the ground that it violates (a) both Article 1, Sec. 8, Clause 4 and the Fourteenth Amendment of the Constitution of the United States, and (b) Section 17 of of the Bankruptcy Law (11 U. S. C. A. Sec. 35).

The Statute

Section 94-b of the Vehicle and Traffic Law, as last amended by L. 1939, ch. 618, provides:

§Sec. 94-b. Failure to satisfy judgments; revocation of licenses and security.

The operator's or chauffeur's license and all of the registration certificates of any person, in the event of his failure within fifteen days thereafter to satisfy every judgment in excess of one hundred dollars which shall have become final by expiration without appeal, of the time within which appeal might have been perfected or by final affirmance on appeal, rendered against him by a court of competent jurisdiction in this state, or in any other state or the District of Columbia, or of any district

court of the United States, or by a court of competent jurisdiction in any province of the Dominion of Canada, for damages on account of personal injury, including death, or damages to property, resulting from the ownership, maintenance, use or operation of a motor vehicle by him, his agent, or any other person for whose negligence he shall be liable and responsible, shall be forthwith suspended by the commissioner of motor vehicles, upon receiving a certified copy of such final judgment or judgments from the court in which the same are rendered, showing such judgment or judgments to have been still unsatisfied after the expiration of fifteen days after the same became final as aforesaid, and, except as otherwise provided in this chapter, shall remain so suspended and shall not be renewed nor shall any other motor vehicle be thereafter registered in his name while any such judgment or judgments remain unstayed, unsatisfied or discharged, except by a discharge in bankruptcy, to the extent of at least five thousand dollars for an injury to one person in one accident, and to the extent of ten thousand dollars for an injury to more than one person in one accident, and to the extent of one thousand dollars for an injury to property in any one accident or three years shall have elapsed since such suspension, and until the said person gives proof of his ability to respond in damages, as required in section ninety-four-o of this chapter for future accidents. Provided, however, if the judgment

creditor consents in writing that the judgment debtor be allowed license and registration, the same may be allowed for six months from the date of such consent by the commissioner and thereafter until such consent is revoked in writing, if proof of ability to respond in damages is furnished in accordance with the provisions of this chapter. It shall be the duty of the clerk of the court, or of the court, where it has no clerk, in which any such judgment is rendered, to forward immediately, upon written demand of the judgment creditor or his attorney, after the expiration of said fifteen days as aforesaid, to such commissioner a certified copy of such judgment or a transcript thereof. In the event the defendant is a non-resident it shall be the duty of the commissioner to transmit to the commissioner of motor vehicles or other officer or officers having in charge the licensing of chauffeurs and operators and the registration of motor vehicles of the state or of any province of Canada of which the defendant is a resident, a certified copy or copies of the said judgment. If after such proof has been given, any other such judgment shall be recovered against such person for any accident occurring before such proof was furnished, such license and certificates shall again be and remain suspended and no other such license or certificate shall be issued to such person while any such judgment remains unsatisfied and subsisting, provided, however, that

1) When five thousand dollars has been credited upon any judgment or judgments ren-

dered in excess of that amount for personal injury to or the death of one person as the result of any one accident, or

(2) when subject to the limit of five thousand dollars for each person, the sum of ten thousand dollars has been credited upon any judgment or judgments in excess of that amount for personal injury to or the death of more than one person as the result of any one accident, or

(3) when one thousand dollars has been credited upon any judgment or judgments rendered in excess of that amount for damage to property as the result of any one accident, resulting from the ownership, maintenance, use or operation of a motor vehicle by such judgment debtor, his agent or by any other person for whose negligence the owner shall be liable and responsible, then and in such event, such payment or payments shall be deemed a satisfaction of such judgment or judgments for the purpose of this section only.

If any such motor vehicle owner or operator shall not be a resident of this state, the privilege of operation within the state of any motor vehicle owned by him shall be withdrawn, while any final judgment against him as aforesaid, shall be unstayed, unsatisfied and subsisting for more than fifteen days, as aforesaid and shall not be renewed, nor shall any operator's or chauffeur's license be issued to him nor any motor vehicle registered in his name until either every such judgment shall be stayed, satisfied or discharged as herein

provided or three years shall have elapsed since such withdrawal, and until such person shall have given proof of his ability to respond in damages for future accidents, as required in the next section. This section shall not apply to any judgment where the cause of action arose prior to September first, nineteen hundred and twenty-nine.

No license or registration certificate shall be suspended pursuant to this section if, at the time the cause of action resulting in the judgment arose, the vehicle whose maintenance, use or operation caused the damage was covered by a surety bond or an insurance policy issued pursuant to section seventeen of this chapter or by an insurance policy, issued by a company authorized to do business in this state, insuring the owner and operator thereof against loss from the liability imposed by law for injury to persons or property to the amount of five thousand dollars on account of bodily injury to or death of any one person, to the amount of ten thousand dollars on account of bodily injury to or death of more than one person caused by any one accident and to the amount of one thousand dollars for damage to property and no license shall be suspended pursuant to this section if the holder thereof, at the time the cause of action resulting in the judgment arose, was insured under a motor vehicle liability policy as defined in this article, and these provisions shall be both prospective and retrospective."

Although it has been amended many times since first enacted in 1929 (L. 1929, ch. 695), the sub-

stance of Section 94-b has remained the same. Because both opinions of the Court below, however, stressed certain amendments to the statute, we catalogue the more significant ones since 1929:

1. L. 1930, ch. 398—Added the provision that it shall be the duty of the Commissioner of Motor Vehicles to transmit a copy of the judgment to the Province of Canada if the defendant is a resident of Canada.
2. L. 1931, ch. 669—Added the provision that the license might be revoked if the judgment had been rendered "in any other state or the District of Columbia, or of any district court of the United States, or by a court of competent jurisdiction or any province of Canada." It was also provided that the judgment might be one for a "death" claim. It was also provided that the judgment might be one for damages resulting from the ownership, "maintenance, use" or operation of the motor vehicle.
3. L. 1934, ch. 438—Added the proviso that the section "shall not apply to any judgment where the cause of action arose prior to September 1, 1929."
4. L. 1936, ch. 293—Added the provision that the suspension of the license would be lifted if "three years shall have elapsed since such suspension." Thus, this amendment furnished an alternative to the existing provision that the suspension would be lifted if the judgment were satisfied or discharged.

5. L. 1936, ch. 448—Added the provision that “if the judgment creditor consents in writing that the judgment debtor be allowed license and registration, the same may be allowed for six months from the date of such consent by the commissioner and thereafter until such consent is revoked in writing, if proof of ability to respond in damages is furnished in accordance with the provisions of this chapter.”
6. L. 1936, ch. 771—Added the proviso that “the provisions of this section shall not be construed to affect a registration certificate or the license issued to the owner, operator or chauffeur of a motor vehicle engaged in the business of carrying passengers for hire who has procured an indemnity bond or insurance policy and who continues to provide such bond or policy pursuant to Section 17 of this chapter.”
7. L. 1937, ch. 114—Deleted the above provision and substituted in its place the paragraph now constituting the last paragraph in Section 94-b. This provides in substance that no license or registration certificate may be suspended if at the time of the accident the motor vehicle or operator was covered by liability insurance in the Statutory amounts.
8. L. 1937, ch. 463—Restricted the section to judgments “in excess of one hundred dollars.” Formerly the section applied to all judgments for personal injuries and judgments in excess of one hundred dollars for property damage.

9. L. 1939, ch. 618—Amended the provision dealing with transmission of a copy of the judgment to the Commissioner of Motor Vehicles to provide that it shall be the clerk's duty to forward the judgment "upon written demand of the judgment debtor or his attorney."

SUMMARY OF ARGUMENT

I. Section 94-b of the Vehicle and Traffic Law does not violate the Fourteenth Amendment of the Federal Constitution.

A. The requirement that the debtor furnish "proof of his ability to respond in damages for future accidents" is valid.

B. The provision that the license is suspended for such part of three years as the judgment remains unsatisfied, unless the creditor consents to its restoration, is valid.

II. Section 94-b of the Vehicle and Traffic Law does not violate either Article I, Section 8, Clause 4 of the Federal Constitution or Section 17 of the Bankruptcy Act.

A. Section 17 is intended merely to afford a defense to an action on the discharged judgment.

B. Section 17 is not intended to interfere with State legislation whose incidental effect is to compel the payment of a discharged judgment.

C. Section 94-b is valid even if its sole purpose is compensation to the judgment creditor.

POINT I

Section 94-b of the Vehicle and Traffic Law does not violate the Fourteenth Amendment of the Federal Constitution.

Briefly summarized, Section 94-b imposes two conditions upon the possession of a driver's license and an automobile owner's registration certificate: (A) after final judgment unsatisfied the license or certificate is permanently suspended unless the debtor gives proof of his ability to respond in damages for future accidents; and (B) in any event, the license or certificate is suspended for such part of three years as the judgment remains unsatisfied, unless the creditor consents to its restoration.

A

The requirement that the debtor furnish "proof of his ability to respond in damages for future accidents" is valid.

This condition presents little difficulty under the Fourteenth Amendment. The right of the legislature to enact a "compulsory automobile insurance statute" is recognized.

Ex parte Poresky, 290 U. S. 30 (1933).

There appears to be no constitutional objection to postponing the requirement that insurance be furnished until after an accident has occurred and liability proved and unsatisfied. To subject to that requirement only those persons who have suffered judgments to be rendered against them, it is submitted, is reasonable classification. The legislature may well conclude that those who have

caused uncompensated injury are unable to drive unless they carry liability insurance.

See Packard v. Banton, 264 U. S. 140 (1924) ;

Hodge Co. v. Cincinnati, 284 U. S. 335 (1932) ;

Continental Baking Co. v. Woodring, 286 U. S. 352 (1932).

But in a larger sense there is no classification. All who accept the license in the first instance are subject to the same terms and conditions. All are warned that if an accident occurs and liability is established and unsatisfied, insurance for the future must be furnished. This is equality of treatment.

B.

The provision that the license is suspended for such part of three years as the judgment remains unsatisfied, unless the creditor consents to its restoration, is valid.

Originally, the statute required that the judgment must be satisfied before the license could be restored. The three year limitation on the suspension and the provision permitting restoration for six months or more with the creditor's consent were the result of subsequent amendments. (L. 1936, ch. 293, 448.) It is submitted that nothing in the Fourteenth Amendment invalidates these provisions.

Judge Learned Hand, speaking for the majority of the Court below, sustained their validity on this ground (R. 7-8) :

"The effect of this was to make the license security for any damage done through the licensee's carelessness, and that was well calculated to increase his care. Indeed—though long use has accustomed us to its acceptance—perhaps insurance against personal fault without some attendant means of enforcing care (such as exists, for example, in the case of marine insurance) always serves somewhat to dampen caution; at least reasonable people might think so, and for that reason a legislature might forbid any insurance whatever against the first few thousand of dollars of liability for negligent driving so that drivers should have a pecuniary incentive to avoid collision."

Judge Patterson, speaking for a unanimous three judge court, which earlier held Section 94-b constitutional, used similar language:

"The New York legislature may well have considered that such a regulation would have a tendency to reduce casualties on the roads by making owners and operators of automobiles exercise greater care than formerly in order to prevent the entry of such judgments against them. The means adopted by the legislature have a reasonable substantial relation to the end in view, public safety on the highway, which is equivalent to saying that the act is a valid exercise of the police power."

Munz v. Harnett, 6 F. Supp. 158, 160 (1933).

The many state courts which have passed on similar statutes have all employed like reasoning in sustaining their validity.

See *In re Opinion of the Justices*, 251 Mass. 617, 147 N. E. 680 (1925);

Watson v. State Division of Motor Vehicles, 212 Cal. 299, 298 P. 481 (1931);

Sheehan v. State Division of Motor Vehicles, 140 Cal. App. 200, 35 P. (2) 359 (1934);

Garford Trucking Co. v. Hoffman, 114 N. J. L. 522, 177 A. 882 (1935);

State ex rel. Sullivan v. Price, 49 Ariz. 19, 63 P. (2) 653 (1937);

Nutter v. State Road Commission of W. Virginia, 119 W. Va. 320, 193 S. E. 549 (1937);

Sullins v. Butler, 175 Tenn. 468, 135 S. W. (2) 930 (1940);

Rosenblum v. Griffin, 89 N. H. 314, 197 A. 701 (1938).

It is submitted, however, that this is not the sole line of reasoning which will defend the provision permitting revocation until the judgment is satisfied. The provision is immune from attack under the Fourteenth Amendment even if its sole purpose is to insure compensation to the injured creditor.

By hypothesis, the legislature could have required as a condition to the operation of a vehicle that the licensee furnish insurance. (*Ex parte Poresky, supra.*) It is recognized that the purpose of such legislation is to secure compensation to the victims of negligent operators.

Sprout v. City of South Bend, 277 U. S. 163, 171 (1928) ;

In re Opinion of the Justices, 81 N. H. 566, 129 A. 117 (1925), cited with approval in *Ex parte Poresky, supra.*

There appears no reason under the Fourteenth Amendment why the legislature may not seek to accomplish the same result after the accident has occurred, and why the same means may not be used to accomplish this result—namely, the denial of the privilege to operate a vehicle.

see Rosenblum v. Griffin, 89 N. H. 314, 197 A. 701 (1938).

Thus, whether viewed before the accident occurs as an inducement to safe driving or viewed after the accident occurs as a means to compensate the injured, the provision for suspension until judgment is satisfied is valid. No constitutional rights of the debtor are denied, then, if the legislature chooses to mitigate the rigor of the suspension by limiting it to three years or until the creditor consents to the restoration of the license.

POINT II

Section 94-b of the Vehicle and Traffic Law does not violate either Article I, Section 8, Clause 4 of the Federal Constitution or Section 17 of the Bankruptcy Act.

Article I, Section 8, Clause 4, of the Federal Constitution provides:

"The Congress shall have power . . . to establish uniform laws on the subject of bankruptcies throughout the United States."

Pursuant to this power Congress has enacted the Bankruptcy Act (28 U.S.C.A.), Section 1(12) of which provides (28 U.S.C.A. Section 1):

" 'Discharge' shall mean the release of a bankrupt from all of his debts which are provable in bankruptcy, except such as are expected by this title."

Section 17 (28 U. S. C. A. Section 35) further provides:

"A discharge in bankruptcy shall release a bankrupt from all of his provable debts . . ." with certain exceptions not here material.

Apparently appellant contends that Section 94-b is invalid because it deprives him of the "full benefit of a discharge in bankruptcy, to which he is entitled under the Constitution of the United States and the Bankruptcy Act." (R. 29.) Whether Section 94-b deprives the appellant of the benefit of a discharge depends in turn upon what benefit Congress intended to bestow upon the debtor through the bankruptcy discharge.

A

Section 17 is intended merely to afford a defense to an action on the discharged judgment.

It is submitted that Congress intended merely to "release the bankrupt from legal liability to pay a debt that was provable in bankruptcy . . ." (*Zurelo v. Reeres*, 227 U. S. 625, 629 [1913]); merely to "afford to the debtor a complete legal defense to an action on such debt if he chooses to avail himself of it." (*Federal National Bank v. Koppel*, 253 Mass. 157, 148 N. E. 379 [1925].)

Certainly it will not be argued that Section 94-b is intended to, or does, deprive the debtor of his defense to an action on the judgment. The debtor is still free to assert his discharge as a defense in any court in such an action.

See also

Dimock v. Revere Copper Co., 117 U. S. 559 (1886).

B

Section 17 is not intended to interfere with state legislation whose incidental effect is to compel the payment of a discharged judgment.

It is recognized, however, that Section 94-b does have the effect of inducing the debtor to pay the judgment. Appellate²⁰ submits, nevertheless, that the statute is still valid, for Section 17 of the Bankruptcy Act is not intended to prevent state statutes having that incidental effect.

Judge Hand below expressed the thoughts of the majority on this point as follows (R. 8-9):

"... if Sec. 17 must be read as relieving bankrupts of all sanctions for the collection of dischargeable debts, no matter what other public purpose they may serve, the section is invalid, for the Bankruptcy Act is paramount. We do not think that the section so much impedes the states in their polity. Inability to pay one's debts is not irrelevant in determining one's fitness for many kinds of activity. In *In Re Hicks*, 133 Fed. 739, for example, a city ordinance had provided that no one should be a municipal fireman who did not pay his debts, and the court held the ordinance invalid because it conflicted with the Bankruptcy Act. The ruling seems to us plainly wrong; the city might have good reasons for excluding from a position so vital to its welfare men who were so irresponsible that they would not live within the salaries given them. The fact that in doing so, the ordinance necessarily acted as a sanction for the collection of the debts was not material; the city was still entitled to make its own standards for admission to its fire department. The same reasoning applies here. Drivers of motorcars are a selected class, and of these those who suffer judgments for faulty driving are presumably less likely to be safe drivers than the average. Out of this number to discipline only those who cannot pay judgments against them, might rationally be a further step in the same direction, for it is not unreasonable to say that among careless drivers, those are apt to be more careless who have no financial interest at stake. It is enough if the standard chosen

works well on a whole; legislation is inevitably a more or less rough process, and need aim at no more than average success."

Judge Patterson, speaking for the unanimous Court in *Munz v. Hartnett*, 6 F. Supp. 158 (1933), expressed the same theory somewhat differently: (p. 160)

"The same reasons that support this legislation against attack on general constitutional grounds support it against this attack; namely, that it may well tend to cause operators and owners of automobiles to take pains so as not to have a judgment growing out of negligent driving entered against them."

See also

Rincer v. Boardman, 32 D. C. 27, 45 Dauph. 78 (Pa. 1938), holding a similar Pennsylvania statute constitutional;

In Re Petition of Balinski (Circ. Court of Wayne Co. Mich. 1939), reported in C. C. H. Bankruptcy Law Service, Pgh. 51,869, holding a similar Michigan statute constitutional.

This Court has recognized the validity of state legislation which authorizes the bankrupt to be punished for contempt in proceedings supplementary to execution on a judgment, and which further orders the fine imposed on the bankrupt for the contempt to be paid to the judgment creditor.

Spalding v. New York, 4 How. 21 (1846);

See also

In re Koronsky, 170 Fed. 719 (1909);

People ex rel. Otterstedt v. Sheriff of Kings County, 206 Fed. 566 (1913);

In re Spagat, 4 F. Supp. 926 (1933).

In such cases the payment to the judgment creditor, whose judgment has been discharged, is not an "incidental possible effect" of the state legislation but is the desired compelled effect. And yet the validity of the legislation as against the Bankruptcy Act is sustained, on the theory, as the Court in *In re Koronsky, supra*, said:

"Manifestly the offense was one peculiarly against the court, and of the sort where the punishment of the offender is a vindication of the dignity of the court: it does not lose that character because the statute authorizes the court to turn over the amount of the fine when collected to some person pecuniarily aggrieved by the offender's conduct."

If the Bankruptcy Act does not prevent legislation protecting the dignity of the state courts, it is submitted that Act likewise does not prevent legislation protecting the travellers on the state highways, although the incidental effect of the legislation in both instances may be the payment of a discharged judgment.

cf. *Palmer v. Massachusetts*, 308 U. S. 79 (1939).

C

Section 94-b is valid even if its sole purpose is compensation to the judgment creditor.

Let it be assumed, however, contrary to the finding of the lower Court and of all the State Courts which have sustained similar legislation, that the legislature did not think and could not have thought that Section 94-b might rationally tend to increase care on the part of licensees. Let it be

assumed, therefore, that Section 94-b was intended solely to compel the payment of compensation to the aggrieved creditor. It is respectfully submitted that the statute is still valid, despite the Bankruptcy Act.

Again, by hypothesis, the legislature could have required as a condition to the operation of a vehicle that the licensee furnish insurance. (*Ex parte Poresky, supra*). For reasons not here material, but among which may be suggested the large rural population in New York, the legislature did not choose to saddle all licensees with the burden of insurance. Instead, it chose the mechanism of Section 94-b, permitting absolute freedom to the licensee until judgment day, when the penalties became operative. At the same time, however, the legislature gave the licensee an option: it permitted him to avoid the penalties of Section 94-b by taking out a motor vehicle liability policy. (This is the substance of the last clause of the section, and was probably intended to get away from the decision in *Jones v. Harnett*, 247 A. D. 7, 286 N. Y. Supp. 220 (1936), affirmed in 271 N. Y. 626, 3 N. E. (2) 155 (1936).

Is it unconstitutional for the State to use its licensing power to insure the payment of a judgment (assuming that is the only permissible interpretation of Section 94-b) under these circumstances? Is it unconstitutional for the legislature to warn a licensee that it will use its "compulsory insurance" power "in reverse", when at the same time it permits the prospective judgment debtor to escape that penalty by voluntarily taking out insurance in advance? It is respectfully submitted

that nothing in the Bankruptcy Act prevents the legislature from imposing this sanction to collect a judgment when at the same time it offers relief from that sanction through voluntary conduct which it could constitutionally compel.

In asking the Court to approve Section 94-b appellee does not press the legal theory, accepted by the highest courts of some states, that the legislature may prohibit the use of motor vehicles upon the highways or streets, and, therefore, the operation of an automobile is a privilege which the legislature may grant upon any condition it chooses to impose.

See e. g., *People v. Rosenheimer*, 209 N. Y. 115, 102 N. E. 530 (1913);

State v. Sterrin, 78 N. H. 220, 98 A. 482 (1916);

In re Opinion of the Justices, 251 Mass. 569, 147 N. E. 681 (1925), cited with approval in *Ex parte Poresky, supra*.

Certainly, however, if any such doctrine were adopted, it would sanction not only Section 94-b but even legislation that required as a condition to the granting of the license an agreement that the licensee would not plead his discharge in an action on the judgment.

See dissenting opinion of Holmes, J., in *Power Manufacturing Co. v. Saunders*, 274 U. S. 490, 497 (1927).

CONCLUSION*

Section 94-b is probably not the last word in New York in this field of motor vehicle legislation. Already there have been recommendations to adopt statutes patterned on the more stringent and burdensome provisions of the New Hampshire (See *Rosenblum v. Griffin, supra*) or Massachusetts statutes. Certainly before the legislature adopts either of these methods of regulation it should be convinced that the present legislation does not have the desired results. Only that reason rather than any notion of unconstitutionality, it is respectfully submitted, should cause Section 94-b to be discarded.

The order and judgment appealed from should be affirmed.

Respectfully submitted,

JOHN J. BENNETT, JR.,

Attorney-General of the
State of New York,

Attorney for Appellee.

HENRY EPSTEIN,

Solicitor-General.

JACK GOODMAN,

Assistant Attorney-General,

Of Counsel.

* At the writing of this brief, appellee has still not been served with a copy of appellant's brief. Appellee furnishes this information to the Court merely to explain the significant absence in this brief of any reference to the arguments or authorities which appellant may use in support of his points.

APPENDIX

For the information of the Court, we catalogue the following notes in legal periodicals, reviewing the decisions in this field:

- 34 Columbia Law Review 555 (1934)
- 19 Cornell Law Quarterly 278 (1934)
- 47 Harvard Law Review 870 (1934)
- 39 Michigan Law Review 645 (1941)
- 8 University of Chicago Law Review 326 (1941)
- 5 University of Pittsburgh Law Review 26 (1938)
- 43 Yale Law Journal 344 (1933)

